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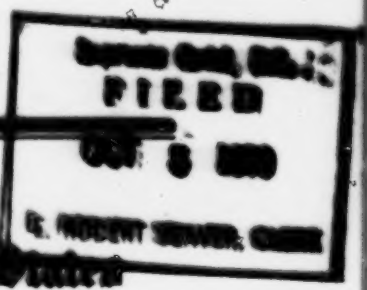

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 802

FRANK BUTCHER, ET AL., *Petitioners*

v.

FLORIDA INDUSTRIAL COMMISSION AND NATIONAL AIRLINES, INC., *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

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Frank Butcher and 306 others[1] pray that a writ of certiorari issue to review the judgment of the District Court of Appeal of Florida, Third District, entered in the above-entitled case on February 18, 1970 (*infra*, p. 19a).

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[1] The 306 others are identified by name at R. 257-268.

OPINIONS BELOW

The opinion of the District Court of Appeal of Florida, Third District, is reported at 231 So. 2d 47 (*infra*, pp. 14a-18a). The decision of the Florida Industrial Commission, Unemployment Compensation Board of Review (*infra*, p. 13a), and the decision of its Senior Appeals Referee which it adopted (*infra*, pp. 1a-12a), are both unreported. Related decisions of the United States Court of Appeals for the Fifth Circuit and of the United States District Court for the Southern District of Florida in *National Airlines* v. *International Association of Machinists and Aerospace Workers* are reported at 416 F.2d 998 (*infra*, pp. 22a-36a), 74 LRRM 283 (*infra*, pp. 47a-53a), and 308 F. Supp. 179 (*infra*, pp. 37a-46a).

JURISDICTION

The decision of the District Court of Appeal of Florida, Third District, was rendered on January 27, 1970 (*infra*, p. 14a); a petition for rehearing was denied by that court on February 18, 1970 (*infra*, p. 19a); and the final judgment of that court was entered on February 18, 1970 (*infra*, p. 19a). The Supreme Court of Florida denied a petition for a writ of certiorari to review the judgment of the District Court of Appeal on May 26, 1970 (*infra*, p. 20a), and denied a petition for rehearing on June 30, 1970 (*infra*, p. 21a). An order was entered on September 8, 1970 by Mr. Justice Hugo L. Black extending the time for filing a petition for a writ of certiorari to October 9, 1970. The jurisdiction of this Court rests on 28 U.S.C. § 1257(3).

QUESTION PRESENTED

Whether a State may deny unemployment compensation to discharged workers because, instead of acquiescing in their discharge by their employer, they and their union seek full reinstatement to their jobs through the exercise of their federal right to invoke judicial relief against their discharge under the Railway Labor Act, to picket their employer in an effort to secure public support for their position, and to submit the just cause of their discharge to arbitration pursuant to the contractual procedure established in accordance with the requirement of the Railway Labor Act.

STATUTES INVOLVED

1. The Florida Unemployment Compensation Law (15 F.S.A. § 443 (1966)) provides in section 443.06(4) that "[a]n individual shall be disqualified for benefits . . . [f]or any week with respect to which the commission finds that his total or partial unemployment is due to a labor dispute in active progress which exists at the factory, establishment or other premises at which he is or was last employed. . . ."

2. Section 6 of the Railway Labor Act (44 Stat. 577, 48 Stat. 1185, 49 Stat. 1189, 45 U.S.C. § 151, *et. seq.*) provides that:

> Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said

time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

STATEMENT

The question presented by this case pertains to the denial by the State of Florida of unemployment compensation to discharged employees because they and their union sought full reinstatement to their jobs by the exercise of their federal rights. The facts relevant to this question may be stated as follows.

National Airlines, an air carrier based at Miami, Florida, operates at John F. Kennedy Airport at New York, Miami International Airport, and other airports (R. 22-23). National employs a class of workers known as mechanical, stores and related employees, of whom about 200 are at John F. Kennedy Airport and about 1,000 at Miami International Airport (R. 23, 35). Pursuant to the Railway Labor Act, this class of employees is represented in collective bargaining by the International Association of Machinists and Aerospace Workers (the Union), and the terms of their employment were governed by a collective bargaining agreement terminable on December 31, 1968 by giving 60-days written notice of intended changes in advance of that date (R. 23, 131, 231 (pp. 1-2, 53)). On October 31,

1968, National and the Union exchanged notices of the changes each desired in their collective bargaining agreement in accordance with section 6 of the Railway Labor Act (R. 24). The consequence of the exchange of section 6 notices was to invoke the statutory requirement of the Railway Labor Act to maintain the status quo pending exhaustion of the procedures prescribed by the Act for the resolution of a dispute over requested changes in contract terms (R. 23).[2]

For many years before October 30, 1968, National used three mechanics at John F. Kennedy Airport to taxi aircraft from the hangar to the terminal building (R. 28-29). On October 30 National posted a bulletin informing the employees that henceforth two men, not three, would be used to taxi aircraft (R. 28-29, 218). The institution of this change, later found to violate the status quo requirements of the Railway Labor Act (*infra*, p. 24a, n. 1),[3] was promptly protested by the Union on October 31 (R. 30, 131, 219), but the change was continued in effect (R. 31). On January 17, 1969, three men refused to taxi aircraft with the reduced complement, and the Company suspended them on the spot for an indefinite period "pending investigation and determination of the action to be taken in connection with your refusal to taxi aircraft this date" (R. 33-35, 232). At National, "normally, suspension is discharge" (R. 144).

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[2] *Detroit and Toledo Shore Line Railroad Co.* v. *United Transportation Union*, 396 U.S. 142.

[3] *National Airlines* v. *International Association of Machinists and Aerospace Workers*, 303 F. Supp. 1132, 1134 (S.D. Fla.):

> "... the Court finds that the Section 6 notices were exchanged prior to effective notice of the taxi crew change. Under this circumstance the ... status quo must be adhered to."

In protest against the suspension, the men at John F. Kennedy Airport, followed quickly by the men at Miami International Airport, refused to work (R. 35, 131-132, 133, 148, 163, 177-178, 188, 194, 199-201, 207, 210-211). On January 18, 1969, pending further hearing, the United States District Court for the Southern District of Florida, on National's application, enjoined the work stoppage and, at the Union's instance, ordered the use of three men to taxi aircraft (R. 36-37, 224A). But the employees refused to return to work because the suspensions of the three men still continued in effect (R. 143, 149, 150, 179, 184-185, 190-191, 215). On January 20, the District Court entered a further order requiring the Union to "advise the membership that it is the order of the Court and of the defendant IAM that all men return to work by their next shift, and that individuals who refuse to so report are subject to penalties which could include dismissal by NATIONAL AIRLINES" (R. 225-226, 37-38). On the afternoon of the same day the Union, which did not authorize or ratify the stoppage and was trying "to cool off the people" (R. 221, 222, 73, 132, 134, 137, 151-152, 154, 162, 164-165, 169, 179, 203), sent a telegram to the employees directing them to return to work (R. 38, 227). On the evening of the same day the Company, without prior leave of the District Court (*infra*, p. 35a, n. 7), "officially notified" each employee by telegram "that if you do not return to work at your work station by no later than your next regularly scheduled shift commencing after 1:00 PM EST, January 21, 1969, your employment with National Airlines is terminated and all rights and privileges will be forfeited" (R. 38-39, 228).

About 50 or 60 men returned to work within the deadline set by the Company (R. 42), but the rest refused because the three men who had declined to taxi aircraft with a reduced crew were still suspended (R. 143, 149, 150, 179, 184-185, 190-191, 204, 213-214, 215). On January 22, 1969, subsequent to the expiration of National's return-to-work deadline and the resultant mass discharge of the employees who did not meet it, National wired the three suspended men informing them that the investigation had been completed and that it had been "determined that a suspension of five (5) work days without pay commencing with your suspension on January 17 is an appropriate disciplinary action in your case. Report for duty on your regularly scheduled shift Friday, January 24, 1969" (R. 233, 61-62, 71-72, 81). But National refused to rescind the mass discharge of the men whom it had terminated in accordance with the telegrams to them when they did not return to work within the specified deadline. "Those that did not return by that telegram were terminated. They are no longer employees of National Airlines" (R. 44). The employees were terminated "[c]ommencing with the second shift on January 21st, which is at 3:30 p.m." (R. 49). As National's vice-president in charge of industrial relations reiterated: "They were all terminated unequivocally" (R. 67); "terminations are terminations" (R. 51); "terminated means terminated period" (R. 85); "[w]e terminated these employees and are replacing them" (Tr. 87); "the employees were discharged" and "their termination is a continuing thing . . ." (R. 88).

About January 28, 1969, National sent each of the discharged employees a final pay check and a routine personnel form notifying them formally of their ter-

mination (R. 49-50, 66, 83, 175, 194-195); "the termination was effective with the wire which they received on the 20th upon their failure to return to work on the 21st" (R. 66, 49).[4] National had begun to recruit replacements on January 23 (R. 42-43, 76), and by March 3, 1969, when the hearing before the Florida Unemployment Compensation Appeal Tribunal was held, all but 250 of the jobs had been filled (R. 56-57, 63, 84, 97). At the same time that National had begun to recruit replacements, it had also offered to rehire the discharged employees, at their former rate of pay and with unimpaired pension rights, but only as new employees with no seniority, with loss of accumulated vacation rights and sick leave benefits, and subject to discharge at will within ninety days of rehire as probationary employees (R. 43-45, 51-54, 64, 98). National would rehire the discharged men only for jobs which had not been filled by replacements, and then only as new employees without seniority and other benefits (R. 56, 63-64, 87, 98).

The Union and the men refused to accept the mass discharge of the employees "as being final," or to acquiesce in the rehire of the men as new employees, and undertook to do "everything necessary to bring about their reinstatement" (R. 146, 157-158, 169-170, 188, 191-192, 202, 208-209). To this end the Union took three courses of action. (1) The Union sought judicial relief against the mass discharge claiming that it constituted prohibited recourse to self-help by National in violation of the status quo requirement of the Railway Labor Act (R. 240-241, 173-174). (2) The Union

[4] National deducted from the discharged employees' final pay checks any balance due on notes of those employees held by the Credit Union (R. 83, 111-113). "This is standard . . . with respect to terminated employees" (R.83).

picketed National in order to inform the public of the mass discharge and by that means to gain public support for the reinstatement of the men (R. 158-159). The signs read: "National Airlines unfair and may be unsafe. Skilled mechanics and related employees fired and locked out. Don't fly National" (R. 48). The picketing expressed "the right of every human being to protest" (R. 158). (3) The Union pursuant to the collective bargaining agreement invoked arbitration of "a 'class' grievance on behalf of all terminated employees" claiming that the mass discharge was without "just cause" (R. 236-238, 67, 69, 87, 142, 144, 173).

The quest for judicial relief eventuated in a requirement that National reinstate with back pay all the discharged men whom National had not replaced by January 24, 1969. The United States District Court for the Southern District of Florida, on the Union's application to it, denied any relief against the mass discharge (R. 58, 240-241, *infra*, p. 25a). An appeal was taken to the Court of Appeals for the Fifth Circuit (R. 240-241, 142), and on September 23, 1969, that Court reversed (*infra*, pp. 22a-36a). The Court of Appeals held that, in order to reconcile the carrier's statutory obligation to maintain the status quo unaltered by resort to self-help with the carrier's need to restore service, the balance should be struck at allowing the carrier to replace, but not to discharge, the employees engaged in the unauthorized work stoppage (*infra*, pp. 25a-36a). The Court of Appeals therefore concluded that "the mass discharge of the strikers exceeded the permissible bounds of employer self-help under the circumstances" (*infra*, p. 36a). It remanded the case to the District Court with instructions (1) to determine the time when the work stoppage would have

ended and the strikers would have returned to work, (2) to ascertain the number of strikers who had been replaced as of that time, and (3) to order the reinstatement of those strikers who had not been replaced by then (*infra*, pp. 34a-36a). On remand, the District Court found that, (1) but for the mass discharge, the stoppage would have ended on January 24, 1969, with the lifting of the suspension of the three men who had refused to taxi aircraft with a reduced crew (*infra*, pp. 39a, 50a), and that, (2) on January 24, 67 strikers had been replaced by National (*infra*, pp. 39-40a, 51a), but (3) the District Court nevertheless refused to direct the reinstatement of the unreplaced strikers because in its view the mass discharge was essential to restoration of service (*infra*, pp. 40a-44a). A second appeal was taken to the Fifth Circuit, and that court on July 15, 1970, again reversed (*infra*, pp. 47a-53a). It held that (1) the limitation of self-help to replacement had been settled on the previous appeal and redetermination of that issue was beyond the authority of the District Court (*infra*, pp. 47a-50a), (2) the District Court had applied erroneous standards in determining that 67 strikers had been replaced and it should reconsider in accordance with the correct standards whether that or a lesser number of strikers had been replaced (*infra*, pp. 51a-53a), and (3) those strikers determined to be unreplaced "must be reinstated with full benefits including back pay" (*infra*, p. 52a).

Meanwhile, on and after January 22, 1969, the discharged employees stationed at Miami International Airport had applied for unemployment compensation to the Florida Industrial Commission, Unemployment Compensation Division (R. 1, 243). On and after February 3, 1969, the Commission's Claims Examiners

denied the applications on the ground that the claimants' unemployment was due to a labor dispute at National (R. 2-8, 243). An appeal was taken from that denial to the Florida Unemployment Compensation Appeal Tribunal (R. 9-11, 243). On March 6, 1969, after hearing, the Tribunal's Senior Appeals Referee rendered his decision sustaining the disqualification of the claimants for unemployment compensation (R. 251), giving as his reason that "the labor dispute has been in active progress for the period beginning January 17, 1969, to the present time because the labor dispute was never finally settled, terminated, or completely abandoned" (R. 250). On March 14, 1969, an Application for Appeal from the referee's decision was filed with the Unemployment Compensation Board of Review (R. 252-255). The application stated in part that (R. 253-254):

> . . . [I]n an effort to have their discharges determined to be improper or contrary to the status quo provisions of the Railway Labor Act . . . these Claimants-Appellants are merely pursuing their legal rights which are properly provided for and protected for them as employees under the laws of the United States of America. . . .
>
> . . . [T]he Appeals Referee erred by failing to recognize that these Claimants-Appellants are seeking reinstatement through federally created rights . . . (1) the *status quo* provisions of the Railway Labor Act; (2) by requesting arbitration before the System Board of Adjustment; (3) by seeking their reinstatement rights through the Federal Courts of the United States as provided for them under the laws of the United States; and (4) which laws have pre-empted any Florida law interpretation which as applied and interpreted here would render the State law unconstitutional under the Supremacy Clause of the United States Constitu-

> tion by depriving and penalizing each of these individuals for exercising their federally granted rights.

On April 18, 1969, the Board of Review summarily denied leave to appeal and made "the decision of the Appeals Referee the decision of the Board of Review" (R. 270). A petition for certiorari to review the decision of the Florida Industrial Commission, Unemployment Compensation Board of Review, was filed with the District Court of Appeal of Florida, Third District (*infra*, p. 14a). The petition stated that (Pet. 3):

> The Industrial Commission's ruling in its application of the Florida Unemployment Compensation Law violates the supremacy clause of the Federal Constitution in the following particulars: First, it financially penalizes petitioners, as former employees, for pursuing their legal rights under the Railway Labor Act, the law of the land, and in particular their right to maintain the *status quo* pursuant to 45 U.S.C. § 156; secondly, the Industrial Commission failed to consider that the massive discharge of the three hundred seven petitioners constituted a *permanent* discharge and a permanent change of the status quo; thirdly, the congressional and statutory policy of the Railway Labor Act is violated where petitioners for exercising their fundamental rights granted to them by Congress under the Railway Labor Act are financially penalized by the Commission's application of the Florida Unemployment Compensation Law.

The District Court of Appeal denied review, and ruled upon petitioners' federal claims as follows (*infra*, p. 18a):

> The employer invited the petitioners who had been discharged to return to work, subject to tem-

> porary, though not necessarily permanent, loss of seniority and certain other benefits. Through procedures offered under the Railway Labor Act, the petitioners sought to establish the right to return to work without loss of seniority or benefits. They argue that to deprive them of unemployment compensation, while so proceeding, violates their constitutional rights and unlawfully prejudices them for pursuing rights under the federal act. We find these contentions to be unsound because the evidence was sufficient to show, as found by the commission, that their continued absence from work was and remained due to the continuing labor dispute.

A petition for a writ of certiorari was filed with the Supreme Court of Florida, urging that "the Third District's decision directly collides with federal labor policy" (Pet. 5), but that court denied review because "it is without jurisdiction . . ." (*infra*, p. 20a).

REASONS FOR GRANTING THE WRIT

In *Nash* v. *Florida Industrial Commission*, 389 U.S. 235, a Florida worker filed an unfair labor practice charge with the National Labor Relations Board against her employer seeking reinstatement and back pay on the ground that her employer had laid her off because of her union activities in violation of the National Labor Relations Act. Florida denied her unemployment compensation for the reason that, by filing the unfair labor practice charge, her "unemployment" became "due to a labor dispute" and she was therefore "disqualified" for benefits by Florida law. This Court invalidated this application of Florida's Unemployment Compensation Law because, as the State's basis for disqualification "has a direct tendency to frustrate the purpose of Congress to leave people free to make

charges of unfair labor practices to the Board," it impermissibly burdens realization of a federal right (*id.* at 239-240).

Florida in this case works the same frustration of national purpose as in *Nash*. In *Nash*, to secure relief against her discharge, the worker invoked the protection of the National Labor Relations Act, the exercise of a federal right. In this case, to secure relief against their discharge, the workers invoked the protection of the Railway Labor Act, participated in picketing, and sought contractual redress, all the exercise of federal rights. In this case, as in *Nash*, Florida used the indicia of the exercise of federal rights to impute "unemployment" to "a labor dispute" and, based on that state characterization of the federally-protected activity, disqualified the workers for benefits. And so, in this case, no less than in *Nash*, nullification of Florida's action is essential in order to preserve the exercise of paramount federal rights from impairment.

1. The question which requires this Court's determination can be put into quick focus. National discharges the workers because they do not discontinue a strike within the deadline it specifies. National thereafter offers to rehire the discharged workers, but only as new employees without seniority and with loss of vacation and sick leave benefits, and then only to such jobs which have not yet been filled by replacements. The workers refuse to submit to this impairment of their job status—no jobs for those who have been replaced and sharply depreciated status for those who accept rehire—but seek full reinstatement by recourse to judicial relief, contractual redress, and picketing. Florida holds that, as the workers persist in their efforts to secure full reinstatement, they are disqualified

for unemployment compensation "because the labor dispute was never finally settled, terminated, or completely abandoned" (*infra*, p. 11a). Accordingly, Florida makes eligibility for unemployment compensation dependent on relinquishment of the quest for reinstatement.

But relinquishment of the quest for reinstatement means surrender of the exercise of federal rights. For each of the means by which the workers sought reinstatement constituted resort to a federal right. (1) Invocation of judicial relief, ultimately obtained, was based on the availability of judicial remedies to realize the protection conferred by the Railway Labor Act against alteration of the status quo pending exhaustion of the statutory procedures for settlement of a dispute over new employment terms. *Detroit and Toledo Shore Line Railroad Co.* v. *United Transportation Union*, 396 U.S. 142. (2) Picketing to inform the public of the men's side of the dispute and to secure support for it is the exercise of a statutory (*Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369, 385-386) and constitutional (*Amalgamated Food Employees Union* v. *Logan Valley Plaza*, 391 U.S. 308, 313-314) right. (3) Recourse to contractual remedies prescribed by the agreement to resolve the just cause of the discharge is founded on the Railway Labor Act; "the parties were placed under the statutory duty of establishing and utilizing system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes arising under existing contracts." *International Association of Machinists* v. *Central Airlines*, 372 U.S. 682, 686.

Florida thus exacts relinquishment of the exercise of federal rights as the price of unemployment com-

pensation. Workers must either forego unemployment compensation if they choose to exercise their federal rights in seeking reinstatement, or they must forego exercise of their federal rights if they choose to qualify for unemployment compensation. And, for workers without the wherewithal to endure the privation of the loss of immediate income, the drive is towards impalement on that horn of the dilemma which requires giving up federal rights; "[e]ven the hope of a future award of back pay may mean little to a man of modest means and heavy responsibilities faced with the immediate severance of sustaining funds." *Nash* v. *Florida Industrial Commission*, 389 U.S. 235, 239. Florida thus requires surrender of federal rights in order to qualify for unemployment compensation and heavily weights such choice as there is in favor of surrender. It is just this sort of state hobbling of federal rights that the Supremacy Clause of the Constitution bars. *Nash* v. *Florida Industrial Commission*, 389 U.S. 235; *Sherbert* v. *Verner*, 374 U.S. 398.

2. Florida's interference with the exercise of federal rights is especially apparent and vexatious in this case because National's discharge of the workers did indeed violate the Railway Labor Act. As the Court of Appeals for the Fifth Circuit held, "the mass discharge of the strikers exceeded the permissible bounds of employer self-help under the circumstances" (*infra*, p. 36a). The employees were fighting against their victimization by action of their employer made illegal by federal law. Florida thus predicates denial of unemployment compensation on the employees' resistance to violation of federal law. Abridgement of federal rights is therefore doubly implicated. The employer's own action offended federal law, and the employees' response to that illegality was protected by federal law.

3. Florida's application of its Unemployment Compensation Law is also invidious. National defended the mass discharge of the employees on the ground that they participated in "a wildcat strike" and such participation "is misconduct which justifies discharge by the employer" (R. 153, 87-88, *infra*, pp. 29a-30a). National's reliance on misconduct as the basis for its discharge of the employees brought section 443.06(1) of the Florida Unemployment Compensation Law into play. That section provides in part that an "individual shall be disqualified for benefits" for a maximum period of twelve weeks following the week "in which he has been discharged by his employing unit for misconduct connected with his work. . . ."[5] Thus, under Florida law, even when an employee has been discharged for misconduct, the maximum period of disqualification for unemployment compensation is twelve weeks. Nevertheless, in this case, based on the finding that "the labor dispute was never finally settled, terminated, or completely abandoned" (*infra*, p. 11a), the employees despite their discharge for alleged misconduct were disqualified for the entire period that they continued to seek full reinstatement through exercise of their federal rights. This means that, so long as the employees refuse to submit to loss of their jobs to replacements or to a return to work at depreciated jobs

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[5] An individual shall be disqualified for benefits:

(1) For the week in which he has voluntarily left his employment without good cause attributable to his employer or in which he has been discharged by his employing unit for misconduct connected with his work, if so found by the commission, and for not more than the twelve weeks which immediately follow such week, as determined by the commission in each case according to the circumstances in each case or the seriousness of the misconduct. . . .

but instead persist in pursuing their federal rights, they will remain disqualified for unemployment compensation because "the labor dispute was never finally settled, terminated, or completely abandoned." Accordingly, disqualification beyond twelve weeks is based precisely on the employees' exercise of their federal rights, and continues for the entire duration of that exercise. This constitutes invidious discrimination against the exercise of federal rights, for employees discharged for misconduct who do not exercise their federal rights receive unemployment compensation after twelve weeks, while employees who do exercise their federal rights are disqualified beyond twelve weeks and remain disqualified until they relinquish that exercise. It goes without saying that a "state may not discriminate against rights arising under federal laws." *McKnett* v. *St. Louis & San Francisco Ry. Co.*, 292 U.S. 230, 234.

4. Florida cannot defend its action on the ground that its denial of unemployment compensation was designed to maintain its neutrality in a labor controversy, and maintenance of a neutral stance does not trammel the exercise of federal rights. State neutrality is an impossibility in this situation given a system of unemployment compensation. If Florida withholds compensation, it favors the employer; if Florida grants compensation, it favors the employees. It must therefore willy-nilly favor one or the other side whatever it does. The only true neutrality, therefore, is to make the fact of unemployment as such the element determinative of the grant of compensation, and to treat the underlying labor controversy as irrelevant. And this rationale is required by the supremacy of federal law when disqualification said to be based on mainte-

nance of neutrality in a labor dispute is at bottom interference with the free exercise of federal rights. The impossibility of uncritical acceptance of a plea of neutrality as conclusive is especially evident in this case, for Florida refused in the name of neutrality even to refer the employees discharged by National to available employment elsewhere (R. 215-216)!

This rationale does not implicate the validity of the conventional application of the labor dispute disqualification to deny compensation where unemployment is caused by a strike or lockout called to exert economic pressure in a controversy over contract terms to be incorporated in a collective bargaining agreement. In an economic strike the employees withhold their labor; in an economic lockout the employer withholds labor from his employees; in both the ensuing unemployment is part of the risk which is the inherent, lawful, and protected incident of the economic contest. Denial of unemployment compensation in that contest may therefore be considered consistent with the clash of economic power contemplated by federal law. For a State to decline to soften this clash is in a class apart from unemployment caused by the discharge of employees for which the State declines to grant compensation because the employees refuse to submit and resort to the exercise of their federal rights to secure full reinstatement.

5. This case presents a necessary continuation of the work which this Court began in *Nash*. For too long the portmanteau of "labor dispute" had been allowed to carry whatever disqualification a State chose to impose without regard to its impingement on federal rights. In *Nash* this Court marked one point in a line that a State could not cross. In this case this Court should mark another. Only in this way can a boundary

finally be pricked out which will separate the area of federal paramountcy from state autonomy in the important field of unemployment compensation.

CONCLUSION

For the reasons stated this petition for a writ of certiorari should be granted.

Respectfully submitted,

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